

1
2
3
4
5 UNITED STATES BANKRUPTCY COURT
6 NORTHERN DISTRICT OF CALIFORNIA

7 In re

8 AUTOMATIONSOLUTIONS
9 INTERNATIONAL, LLC,

Debtor(s).

No. 01-11951

10
11 THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS,

12
13 Plaintiff(s),

14 v.

A.P. No. 03-1141

15 THOMAS V. SACCO,

16 Defendant(s).

17
18 Memorandum on Motion to Dismiss

19 Adversary Proceeding 02-1092 was an action involving the same parties in which the plaintiff
20 sought collection of a note. The court transferred the matter to the District Court because it thought
21 defendant Thomas Sacco had a right to a jury trial and did not seek to have the matter heard in this court.
22 This adversary proceeding involves the same parties, but seeks to avoid a security interest claimed by
23 Sacco as a fraudulent transfer. Sacco seeks dismissal of this case or transfer to the District Court,
24 arguing that the same issues are already before the District Court in the prior adversary proceeding or
25 that the issues raised here should have been raised there.

26 Unfortunately, this court was remiss in not carefully reviewing Sacco's counterclaim in the

1 earlier adversary proceeding, which contained allegations that the estate is indebted to him in the amount
2 of \$502,500.00 and a prayer for damages in this amount together with prejudgment interest, court costs
3 and attorneys' fees. Had the court noted this counterclaim, it would have at least severed this portion of
4 the counterclaim before transferring it to the District Court, as Sacco is seeking money from the estate.¹
5 More likely, however, the court would have kept the entire case; once a party has submitted a claim
6 against the bankruptcy estate, he has consented to the bankruptcy court's equitable power to allow or
7 disallow claims and waived any right to a jury. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 59 n.
8 14, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989). It does not matter whether the claim is submitted by a
9 formal proof of claim or by counterclaim; if the intent is to recover anything from the estate, the right to a
10 jury is waived. *Matter of Peachtree Lane Assoc., Ltd.*, 150 F.3d 788, 798 (7th Cir. 1998). As the
11 District Court noted in *In re Larry's Apartment, LLC*, 210 B.R. 469, 473-74 (D. Ariz. 1997):

12 Since *Granfinanciera* and *Langenkamp* were decided, courts have construed
13 counterclaims filed in an adversary proceeding as claims against the bankruptcy estate
14 which divest a defendant in an adversary proceeding of the right to a jury trial. See,
15 *Peachtree Lane Assoc., Ltd. v. Granader*, 175 B.R. 232, 236 (N.D.Ill.1994)
16 (defendants in an adversary action waived their right to a jury trial by filing
17 counterclaims and successfully seeking an extension of the bar date so that their
18 counterclaims could be treated as proofs of claim against the estate); *In re Hudson*,
19 170 B.R. 868, 874 (E.D.N.C.1994) ("convincing authority has held that a counterclaim
does qualify as a 'claim' for purposes of the ... *Granfinanciera* and *Langenkamp*
private rights jury trial analysis ... the defendant's filing of a counterclaim caused the
defendant to lose it's Seventh Amendment right to jury trial"); *In re Lang*, 166 B.R.
964, 966 (D.Utah 1994); *Americana Expressways, Inc.*, 161 B.R. at 714 ("[b]y
presenting a [defense which, in reality, presents a counterclaim against the estate],
Defendant has submitted to the bankruptcy court's equity jurisdiction and is not entitled
to a jury trial").

20 Having transferred the prior adversary proceeding to the District Court when it probably should
21 not have done so, this court has created a confusing situation which only the District Court can resolve,
22 either by referring that adversary proceeding back to this court, severing out and transferring those
23 portions asserting a claim against the estate, withdrawing the reference of the entire bankruptcy case, or
24

25 ¹Distribution of an estate is an equitable matter to be decided by a single court to insure that the
26 rights of third parties are protected and the estate is distributed according to law.

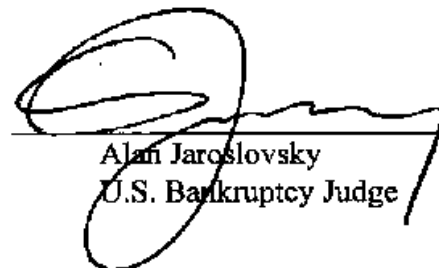
1 otherwise providing direction to the parties and this court.

2 In this adversary proceeding, plaintiff seeks to avoid Sacco's security interest as a fraudulent
3 transfer. It is a core matter pursuant to 28 U.S.C. § 157(b)(2)(H), and should be tried without a jury for
4 the reasons stated above. Sacco's motion to dismiss will accordingly be denied, and it is not appropriate
5 for this court to transfer the matter to the District Court although the District Court can certainly withdraw
6 the reference if it wishes to take the case. Sacco's motion will accordingly be denied. However, the
7 court will stay all activity in this case in this court for 90 days, in order to afford time for District Court
8 consideration.

9 Counsel for plaintiff shall submit an appropriate form of order.

10
11
12 Dated: July 26, 2003

13 [serve Davis and Katz]
14


Alan Jaroslovsky
U.S. Bankruptcy Judge